

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE, :

IN LIMINE  
EVIDENTIARY RULINGS  
MAY 5, 2003  
ORDER

**FILED**  
Plaintiff, IN CLERK'S OFFICE  
U.S. DISTRICT COURT, E.D.N.Y.

-- against -- ★ MAY - 8 2003: ★

99 CV 3999 (JBW)

A.A. ARMS INC., et al., BROOKLYN OFFICE

Defendants.  
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NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE, :

Plaintiff, :

99 CV 7037 (JBW)

-- against -- :

ACUSPORT CORP., et al., :

Defendants.  
:  
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APPEARANCES:

For Plaintiff National Association for the Advancement of Colored People (NAACP):

Elisa Barnes  
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New York, NY 10006

For Defendants AcuSport, Inc.; Alamo Leather Goods, Inc.; Bangers, LP; Bill Hick's & Co.;  
Brazas Sporting Arms, Inc.; Camfour, Inc.; Chattanooga Shooting Supplies, Inc.; Davidson's,

Inc.; Dixie Shooters' Supply, Inc.; Ellett Brothers, Inc.; Euclid Avenue Sales Co.; Hicks, Inc.; Interstate Arms Corp.; Kiesler's Police Supply, Inc.; Lew Horton Distributing Company, Inc.; Lipsey's, Inc.; MKS Supply Co.; Ron Shirk's Shooters Supply; RSR Management Corp.; RSR Group, Inc.; RSR Wholesale, Inc.; Southern Ohio Gun, Inc.; Sports South, Inc.; Valor Corporation; Walter Craig, Inc.; Williams Shooters Supply, Inc.; Zanders Sporting Goods, Inc.:

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For Defendants Amadeo Rossi SA; Braztech International L.C.; Forjas Taurus SA; Heritage Manufacturing, Inc.; Taurus International Manufacturing; :

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By: Timothy A. Bumann

For Defendants Arms Technology, Inc.; Beemiller, Inc. d/b/a Hi-Point Firearms; Bersa S.A.; Browning Arms Co.; Century International Arms, Inc.; Eagle Imports, Inc.; European American Armory Corp.; Glock G.m.b.H (Glock Ges.m.b.H.); Glock, Inc.; Haskell Co. (Haskell Manufacturing, Inc.); Import Sports, Inc.; Israel Military Industries (Israel Military Industries, Ltd.); K.B.I., Inc.; Kel-Tec CNC Industries, Inc.; Magnum Research, Inc.; Para-Ordnance, Inc.; Para-Ordnance Mfg. Inc.; SGS Imports Int'l Inc. (SGS Importers International, Inc.); Tanfoglio Fratelli S.r.L. (Fratelli Tanfoglio S.n.c.):

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For Defendants Hammerli Ltd., a.k.a. Hammerli GmbH; Sigarms Inc.; SIG/Sauer:

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By: F. Franklin Amanat, Vincent Lipari

JACK B. WEINSTEIN, Senior District Judge:

Motions in limine were heard on Monday, May 5, 2003, at 8:30 a.m. The following rulings were made for the reasons stated orally on the record at the hearing.

1. Plaintiff's Expert Witness Lucy Allen

Defendants' motion to preclude the rebuttal testimony of plaintiff's expert witness Lucy Allen is denied. Ms. Allen will produce any new computer codes or programs, calculations, or other statistical analysis that she will rely on in her testimony to defendants. Defendants may have a brief continuance to look at those materials if necessary.

Defendants' renewed motion to strike the testimony of Ms. Allen is denied. Ms. Allen's technical and other specialized knowledge will assist the trier of fact to understand the evidence and determine the facts. She is qualified as an expert by her knowledge, training, skill, experience, education, and other work done in her professional career. Her testimony was based on sufficient facts and data, and she reliably applied reliable principals and methods to those materials. See Fed. R. Evid. 702.

Disagreement with defendants' experts does not diminish Ms. Allen's qualifications to testify as an expert witness in this matter. There may be multiple disagreements between the experts on either side and among the experts on each side, but all of the experts are distinguished professionals and have done a thorough and commendable job in attempting to analyze difficult data, sometimes for the first time that the data has been available for analysis by experts of any kind. As this court has held in prior in limine evidentiary rulings, the experts for both sides are in compliance with Federal Rule of Evidence 702 and Daubert, and the bases for their opinions satisfy Federal Rule of Evidence 703.

2. Plaintiff's Expert Dr. Jeffrey Fagan

Defendants' motion to preclude rebuttal testimony from plaintiff's expert witness Dr. Jeffrey Fagan is denied. Defendants may question Dr. Fagan at 9:00 in the next courtroom concerning his opinion as a criminologist on the suitability and reliability of the trace database as a source of data for statistical analysis.

3. Other Evidentiary Matters

Defendants' group exhibit 70, a series of materials sent to dealers as a part of the Don't Lie for the Other Guy program, is admitted. Defendants' exhibit 1000, the transcript of the deposition testimony shown during defendants' case of the NAACP's Federal Rule of Civil Procedure 30(b)(6) witness Mildred Roxborough, is admitted for the purposes of the court and

the record for appeal.

All parties may select documents in evidence to place in the juror's notebooks so long as the number and volume of exhibits in the notebooks does not become unduly burdensome.

Parties may, if necessary, reopen the case for the admission of additional pieces of evidence on Tuesday, May 6, 2003 or Wednesday, May 7, 2003. If the parties do not reach agreement on Fabbrica d'Armi Pietro Beretta S.p.A.'s objections to document requests offered by plaintiff or on plaintiff's objections to the admission of certain documents used during the testimony of Dr Wecker, they may be heard on those matters.

The plaintiff's and the defendants' proposed jury instructions, the court's proposed charge, and the letter from the Attorney General of the State of New York regarding the burden of proof in a public nuisance case under New York law will be considered at the charging conference to be held at the close of plaintiff's rebuttal case. Plaintiff and defendants will each submit a brief paragraph summary of their contentions to be placed in the jury charge. Individual defendants may also submit brief statements to be included if necessary.

Any motions for judgment or other new motions filed will be heard at the time of the charging conference.

SO ORDERED.



Jack B. Weinstein  
Senior District Judge

Dated: May 7, 2003  
Brooklyn, N.Y.